2064.

SUPREME COURT OF THE UNITED STATES.

No. 72.

JOHN M. WALKER, APPELLANT,

vs.

JONATHAN B. H. SMITH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print
Citation	1	1
Style of court	1½	1
Parties	2	1
Bill of complaint	2	2
Complainant's exhibit, J. M. W. No. 1	8	4
" " " " 2	11	5
Marshal's return	15	6
Defendant's appearance and answer	16	7
" exhibit A	25	10
" " B No. 2	28	11
" " C	32	12
" " B No. 1	34	13
" " B No. 3	37	14
" " B No. 4	40	16
" " E	42	16
General replication	47	18
Commission to take testimony	48	19
Interrogatories	52	20
Decree	62	24
Appeal prayed and granted	63	24
Appeal bond	63	24
Clerk's certificate and seal	65	25

2063-

DISTRICT OF COLUMBIA, *to wit:*

The United States of America to Jonathan B. H. Smith, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal from the decree of the circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein John M. Walker was complainant, and you were defendant, and shew cause, if you can, why the said decree should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. James Dunlop, chief judge of the circuit court of the District of Columbia.

Issued this 19th day of November, 1857.

Service acknowledged.

J. M. CARLISLE,
Sol'r and for App'ee.

Style of court.

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-third day of the same month, in the year of our Lord one thousand eight hundred and fifty-seven, and the independence of the United States the eighty-first:

Present, James Dunlop, chief judge, the Hon. James S. Morsell and William M. Merrick, assistant judges; Jonah D. Hoover, esquire, marshal; John A. Smith, clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

JOHN M. WALKER,
vs.
JONATHAN B. H. SMITH.

Be it remembered that heretofore, to wit: on the thirteenth day of September, in the year eighteen hundred and fifty-four, the said complainant, by Walter D. Davidge, esquire, his solicitor, filed in court here the following bill of complaint and exhibits, to wit:

Bill of Complaint.

To the honorable the judges of the circuit court of the District of Columbia, sitting in chancery:

The bill of complaint of John M. Walker shews unto your honors, that prior to the 30th day of March, 1837, he purchased for a valuable consideration, from William S. Scott, the duly authorized attorney of the heirs of General Charles Lee, certain Virginia military land warrants, numbered 7614, 7615, 7616, 7617, 7618, and 7619, for 15000 acres of land in the aggregate; that at the time of said purchase it was supposed, and your orator was informed and believed, that the appropriation of land by Congress would be sufficient to satisfy all the said warrants; that owing to a deficiency of ten per cent. in said appropriation, there remained due upon the said warrants the amount of 1500 acres of land; that, to secure your orator against loss and give him the absolute control of his said purchase, a certain instrument of writing, whereof a true copy is filed herewith, marked J. M. W., exhibit No. 1, and prayed to be taken as part of this bill, was executed and delivered to him by said Scott, on the 30th day of March, 1837; that said instrument of writing was, within the space of certainly three and perhaps two weeks after the delivery thereof, filed by your orator in the General Land Office with said warrants which had been before the said purchase filed in said office, that the scrip then provided for by Congress might be issued upon them. Your orator further shows that when said instrument of writing was delivered, and for years afterwards, it was uncertain whether Congress would make any further appropriation of land for the satisfaction of said warrants, and that such appropriation was not in fact made until the passage of the act of the 31st of August, 1852. And your orator is advised, avers, and charges that there is no law, usage, or practice, which required said instrument of writing, or any evidence of the antecedent purchase by which he had become the absolute proprietor of said warrants, and all scrip or other provision which might be made to satisfy the same, to be filed in the said office, or elsewhere. Your orator further shews that since the passage of said act of Congress, he has requested that the amount of scrip due upon the said warrants, being for 1500 acres, should be issued and delivered to him by the Commissioner of the General Land Office, who was and is entrusted with the execution of said act, which request your orator is informed and believes would have been complied with by said commissioner, who had recognized the right of your orator to receive, and had issued and delivered to your orator, by virtue of the said instrument, scrip upon the warrants issued to the heirs of Joshua Reynolds, James Gray, Stephen Turnbull, and John Baker, and mentioned in the aforesaid exhibit; but as your orator is informed and believes Jonathan B. H. Smith, the only heir-at-law and executor of said Samuel H. Smith, has interposed to prevent your orator

from receiving the residue of his purchase aforesaid, the said Jonathan pretending to be the owner thereof, and in consequence of such interposition the said commissioner has refused to issue said scrip to your orator, but has determined to await the adjudication of the rights of your orator and said Smith by some competent tribunal, and by such adjudication to conform and abide.

And your orator further shews that the said Jonathan B. H. Smith pretends title to the unsatisfied ten per cent. of said enumerated warrants, by virtue of a certain instrument of writing made between the said William S. Scott and Samuel H. Smith, on the 18th of January, 1831, (more than nine months after the instrument of writing in favor of your orator was filed by him in the General Land Office as aforesaid,) a copy whereof, marked J. M. W. exhibit No. 2, is filed herewith, and prayed to be taken as a part of this bill. And your orator avers that the said Samuel H. Smith had notice of the existence of the instrument of writing in favor of your orator, or might have had, had due and reasonable diligence been used in the examination of the papers relating to said cases, and that notwithstanding the endorsement which appears by said exhibit No. 2 to have been made by F. Keller (a clerk in said land office) upon the instrument of writing in favor of said Samuel H. Smith, the said instrument of writing in favor of your orator was then on file in said land office, and among the said enumerated warrants. And your orator is advised that with or without notice on the part of said Samuel H. Smith, your orator is entitled to the scrip to be issued upon the said warrants, which your orator avers, and is prepared to prove, were purchased and paid for by him at the market price; and your orator further shews that during the long period which elapsed between his said purchase and passage of said act of Congress, no claim was ever set up by said Samuel H. Smith or his said heir-at-law to said warrants or any part thereof, or to the scrip to be issued thereon, nor was any claim set up after the passage of the said act until very lately, and within the last few months, and that it is impossible for your orator to recover back the portion of the purchase money paid said Scott, for which he has not received (and cannot receive until the said pretended claim shall be annulled) the stipulated consideration:

To the end, therefore, that the said Jonathan B. H. Smith may answer the several matters and things hereinbefore stated as fully and particularlyas if he was thereunto specially interrogated, that he may be required to produce in this court the said instrument of writing in favor of his ancestor, the said Samuel H. Smith, that the same may be cancelled; that he may be enjoined and prohibited from receiving the scrip to be issued as aforesaid upon said enumerated warrants; and that your orator may have such other and further relief as his case may require:

May it please your honors to grant unto your orator the writ of subpœna, commanding, &c., and also the writ of injunction, prohib-

iting and enjoining the said Jonathan from receiving the scrip to be issued upon said warrants, and as in duty bound, &c.

W. DAVIDGE,
For complainant.

Complainant's exhibit, marked J. M. W. No. 1, *referred to in the foregoing bill, at page No.* 3.

Know all men by these presents, that I do hereby appoint my true and lawful substituted attorney for me, and in my name, to exercise the same control over the warrants issued to the heirs of

Gen'l Charles Lee, for	15,000	acres.
To heirs of John Reynolds, for	6,000	"
" James Grey, for	4,607⅓	"
" Stephen Turnbull, for	4,000	"
" John Baker, for	1,300	"
	30,907⅓	

In all thirty thousand nine hundred and seven ⅓ acres, as I could do in virtue of powers of attorney now on file in the land office in Washington. Having sold to Jno. M. Walker the aforesaid warrants, and delivered to him the scrip issued in lieu thereof, and there still remaining ten per cent. of said warrants unsatisfied by scrip: Now the object of this power of at'ty is to secure the said Walker the said ten per cent. of warrants unsatisfied or any and every equivalent that may be at any time given in lieu thereof; and I do hereby invest the said Walker with all and each of the powers over said property as is now possessed by me in virtue of the aforesaid powers of at'ty.

As witness my hand and seal this 30th day of March, 1837.

WM. S. SCOTT, [SEAL.]

COUNTY OF HENRICO, *to wit:*

Personally appeared before me, a justice of the peace for the aforesaid county, Wm. S. Scott, and acknowledged the above power of at'ty to be his free act and deed. As witness my hand and seal this 30th day of March, 1837.

JOHN G. MOSBY, *J. P.*

Having constituted W. S. Scott my substituted at'ty to control several of the warrants described in the foregoing power of at'ty, and it being doubtful whether said Scott may have the power to create a substitute under him: now I do hereby, with the consent and at the request of said Scott, substitute of my substituted attorney, giving to said substitute the same powers over said warrants as were previously conferred on the said Scott. As witness my hand and seal this 30th day of March, 1837.

JOSEPH SEGUR, [SEAL.]

COUNTY OF HENRICO, *to wit:*

Personally appeared before me a justice of the peace for the aforesaid county Joseph Segur, and acknowledged the above instrument of writing to be his free act and deed. As witness my hand and seal this 30th day of March, 1837.

JOHN G. MOSBY, *J. P.*

VIRGINIA, *Henrico Co., to wit:*

I, Loften N. Ellet, clerk of the county court for the said county of Henrico, in the State of Virginia, do hereby certify that John G. Mosby, whose name is subscribed to the two foregoing certificates, was, on the day of the date thereof, an acting justice of the peace in and for said county of Henrico, duly commissioned and qualified according to law.

In testimony whereof, I hereto set my name and annex the seal of the said court this 1st day of April, 1837, in the 61st year of the commonwealth.

LOFTEN N. ELLET, *C. H. C.*

Complainant's exhibit, marked "J. M. W. No. 2," referred to in the foregoing bill, at page No. 5.

This indenture, made and concluded on the eighteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eght, by and between William S. Scott, of Richmond, Virginia, and Samuel H. Smith, of Washington city, D. C., witnesseth: that the said William S. Scott, for and in consideration of the sum of seven hundred and fifty dollars in hand paid, to their full satisfaction, before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold and doth hereby bargain, sell, assign, transfer, and set over to the said Samuel H. Smith, his heirs and assigns, all his right, title, claim, and interest in and to six certain Virginia military land warrants, numbered 7614, 7615, 7616, 7617, 7618, and 7619, granted for 15,000 acres, and on which there is still due 1500 acres, which said warrant granted to the said of the first part, for the revolutionary services of Gen. Charles Lee, of the Virginia continental line, and now on file in the General Land Office at the city of Washington, awaiting the emanation of land scrip thereupon: to have and to hold the use, possess and enjoy the said warrants or the scrip which shall issue thereupon, unto the only proper use and behoof of him, the said Samuel H. Smith his heirs and assigns, forever. And the said William S. Scott doth covenant and agree with the said S. H. Smith, and his heirs as follows, to wit: First, that he has title to the said warrants. Secondly, that he will well and truly warrant and defend to him, the said S. H. Smith, and his

heirs, a good, lawful, and sufficient title in absolute fee, to the warrants aforesaid, and the scrip which shall issue thereupon, free from the claim, title, or demand of him, and free from the claim, title, or demand of all and every person or persons whomsoever; and thirdly, he doth hereby guaranty to the said Samuel H. Smith the validity of the said warrants and scrip which may or shall issue thereupon, and for the purpose of investing the said S. H. Smith fully with all his rights in and authority over the said warrants and scrip, the said Wm. S. Scott doth hereby make, constitute, and appoint him his true and lawful attorney, with a power of substitution, to ask, demand, and receive from the General Land Office, Washington city, the said land warrants or land scrip, with full power and authority to sell, and assign the same, and to do and perform, or cause to be done, any and every other act or acts necessary for receiving, selling, assigning, or enjoying the said warrants or scrip; hereby ratifying and confirming whatsoever his said attorney may lawfully do or cause to be done in the premises.

WM. S. SCOTT, [SEAL.]

DISTRICT OF COLUMBIA,
Washington county, to wit:

On this eighteenth day of January, 1838, personally appeared before the subscriber, a justice of the peace, in and for the said county, Wm. S. Scott, and acknowledges the foregoing instrument of writing to be his act and deed, according to the purport, true intent, and meaning thereof, and the act of assembly in such case made and provided.

Acknowledged before and certified by

CLEMENT T. COOTE, *J. Peace.*

The following endorsement is made on the said conveyance: Wm. S. Scott, the party grantor of the within, has full authority on file to sell the warrants, and appoint a substitute, and in the event makes up the 10 p. ct., the scrip to be iss'd will be delivered Congress to Mr. Smith.

F. KELLER.

18th Jan'y, 1838.

Whereupon, subpœna issued as prayed, returnable on the third Monday of October next. At which said third Monday of October, in the year of our Lord one thousand eight hundred and fifty-four, come into court here the said complainant, by his solicitor aforesaid; and the marshal of the district aforesaid, to whom the said subpœna was directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return.

Sum'd.

J. D. HOOVER, *Marshal.*

Whereupon the said defendant, being so forwarned, appeared in court here, by J. Mandeville Carlisle, esquire, his solicitor, and the said cause was regularly continued at rules until March term, eighteen hundred and fifty five, when the said defendant by his solicitor aforesaid filed in court here the following answer, to wit:

Defd'ts Answer.

To the hon'ble the judges of the circuit court of the District of Columbia for the county of Washington, sitting in chancery:

The answer of J. B. H. Smith to the bill of complaint of John M. Walker—your respondent saving to himself all manner of benefit, &c., to the manifold errors and misstatements in said bill contained in answer to the same or so much of the same as he is advised it is proper for him to answer—says, that on or about the 25th of Nov., 1835, the heirs of the late Gen'l Charles Lee executed their certain instrument of writing, (a duly certified copy of which is hereto annexed, marked resp'd exh. A, and prayed to be taken as a part of this answer,) constituing one Wm. S. Scott their attorney, with full power to him to demand and receive from the United States any and all land warrants or scrip in lieu thereof to which their ancestor, the said Lee, was entitled, and to sell the said scrip, with power also to appoint attorneys under him, and to revoke at pleasure such powers of attorney as he might give; that under and by virtue of such power to him the said Scott did procure six certain military land warrants, Nos. 7614, 7615, 7616, 7617, 7618, and 7619, in all for 15,000 acres of land; that under the act of Congress of 1835, he, the said Scott, surrendered the said warrants to the General Land Office, and received in lieu of the same 13,500 acres of scrip, and in his own name and for his own use receipted for said scrip, the said warrants being filed in the Gen'l Land Office, and by the terms of the act of 1835 satisfied; that on or about the 18th of January, 1838, the late Samuel H. Smith purchased from the said Scott the 10 per cent. remaining of said warrants, it being believed that Congress would in time make an appropriation to satisfy the same; that before making said purchase the said Smith examined carefully the said warrants, and all the papers in relation thereto in the General Land Office, and finding that the said Scott had full power to make such sale, and that he had made no prior assignment or sale of the same, he completed his said purchase, and immediately on the same day filed the deed of conveyance from said Scott to him, (a certified copy of which is hereto appended, marked No. 2 of resp'd ex. B, and prayed to be taken as a part of this his answer,) with the said warrants, and in the same bundle of papers in the land office; upon which deed the clerk in said office having the especial charge of said warrants made the endorsement referred to on said deed,

stating the full right of Scott, and that the scrip should be issued to said Smith; and that the said Smith paid in cash to said Scott the sum of $750 in consideration of said sale to him. And your respondent, further answering, saith that in fact Congress made no appropriation for the satisfaction of the 10 per cent. remaining on these warrants until the act of August, 1852; that immediately after the passage of said act, he, or the executor of the said Samuel H. Smith, deceased, applied to the proper department for the issue of scrip, but was informed that it was still undecided whether these warrants come within the provisions of said act of Congress; that it was some months before the department decided that they came within said act; but when it was so decided, your respondent made his application in writing, on the 21st of December, 1852, a copy of which application is hereto appended, marked resp. ex't C, and prayed to be taken as a part of this answer; that in reply to this application your respondent was informed that it was necessary to procure from the executive of the State of Virginia copies of all the papers in relation to these warrants, in order to show to the department here that Gen'l Lee was entitled to these warrants: that at great expense and trouble he procured these documents and filed them; that after an examination of them, and the questions arising on them, the department at length ordered the scrip due on these warrants to be issued to respondent, as ex'r aforesaid, but when he called, after some delay, for the said scrip, he was for the first time informed that the same was claimed by the said complainant by virtue of the said paper, marked J. M. W. exh. 1, and being No. 1 of resp's exh. B. Your respondent avers this was the first intimation or notice to him of the existence of such a paper, and he expressly denies that the said Samuel H. Smith had any notice of the same at the time, to wit, the 18th January, 1838, of his said purchase from said Scott, but avers that neither resp't or his ancestor had any notice of the said paper or of any interest whatever of the said complainant in the said warrants, and he further avers that the said paper was not on file in the Gen'l Land Office on the 18th January, 1838, or at any time previous, and in proof of such averments refers to the endorsement of said Keller on the said conveyance as to said Smith, and to the affidavit of John F. Webb, hereto appended, marked resp'ts, ex. B, No. 3, and prayed to be taken as a part of this his answer, whereby it appears that the original, alleged, and pretended assignment to said complainant was, on the 17th of February, 1838, shown to said Webb at the office of Fowler & Co., in the city of Washington. And your rep't, further answering, saith that on the 3d of August, 1854, the Commissioner of the Gen'l Land Office decided, after deliberate argument and consideration, that the right to these warrants was in your respondent, and that he was the proprietor of the same, a copy of which decision is hereto appended, marked resp't ex. E, and prayed to be taken as a part of this answer. And your respondent

further says that the said Sam'l H. Smith was a *bona fide* purchaser of said warrants for a valuable consideration without notice; that the claim of said complainant is a mere equitable chose in action; that the said paper of the 30th of March, 1837, cannot be considered as an assignment or sale of said warrants to said complainant; It is a mere recital of a sale, general in its terms without specification of time, place or conditions; and in fact your respondent is informed, and so avers that there was no real consideration whatever paid to said Scott by said compl't, and in evidence thereof appends hereto the affidavit of said Scott, marked No. 4 of resp'ts ex. B., and prayed to be taken as a part of this his answer; that the said paper of the 30th March, 1837, (if of any effect,) is a mere power of attorney to complainant, and was revoked by the sale and conveyance of the 18th of January, 1838, to the said Sam'l H. Smith. And your respondent is informed and believes, and therefore avers, that the said William S. Scott is entirely insolvent.

Your respondent submits, that even if the complainant had any equity in the premises, (which is denied,) yet that he, the complainant, must be postponed to your respondent, and hath lost all equity as against him, and that your respondent's equity is superior to that of the complainant, even if the latter were originally a valid equity, and prior in point of time, by reason of the superior diligence of the ancestor of your respondent, as hereinbefore disclosed. He avers that his said ancestor relied, and had the right to rely, upon the files and records of the General Land Office aforesaid, on making said purchase, as disclosing the real condition of the said land warrants, and all incidents thereto, with respect to the title, and all equities therein. And he avers that, according to usage and practice, and the nature of the subject-matter, and the principles of equity applicable in the premises, the said General Land Office was the proper office and place for all persons claiming any interest in the premises to file and give notice of such interest; and that if complainant had any such interest, he, by reason of his laches and neglect in the premises, enabled the said Scott to perpetrate a fraud upon this respondent if such interest should prevail, and that thereby his equity is inferior to that of respondent.

And further, he says that he, this respondent, hath a present complete right in the premises, by reason of the decision aforesaid of the Commissioner of the General Land Office, which complete right at law, joined with his equity, (even if the same be not otherwise superior to that of complainant,) will be respected in equity as against the said complainant; and he prays that the complainant's bill may be dismissed with costs, &c.

J. B. H. SMITH.

CALRISLE,
Solicitor and of Counsel for Resp'ts.

DISTRICT OF COLUMBIA,
Washington county, set:

On this 20th day of March, 1855, before me, the subscriber, a justice of the peace in and for the county aforesaid, personally appears J. Bayard H. Smith, the above-named respondent, and makes oath that the matters stated in the aforegoing answer as of his own knowledge are true as stated, and so far as stated on information and belief, he believes them true as stated.

Sworn and subscribed before me.

H. NAYLOR, *J. P.* [SEAL.]

Respondent's Exhibit "A," referred to in the foregoing answer, at page sixteen.

Know all men by these presents, that we, John Townshend, as heir of Francis Ann Townshend, Townshend Mainwaring, Hester Lee Massie, Sidney Townshend, Archella Towhshend, and Harriet Francis Twemlon, do hereby constitute, nominate, and appoint Wm. S. Scott, of Richmond, Va., our true and lawful attorney, to prosecute any claims to land or money that may be due from the State of Virginia and United States, or either, on account of the revolutionary services of Gen'l Charles Lee, and to demand and receive from the proper offices in Richmond and Washington any land warrants or warrants so due, and to surrender them at the General Land Office, in order to obtain certificates of scrip in lieu thereof, which he is authorized to receive, sell, and assign, or, if said warrants be already surrendered, then to demand and receive the certificates, and to sell and assign the same. If no scrip can be obtained, he is authorized to receive the warrants which may have been surrendered, and to locate or sell the same, as he may think best. Said attorney is also authorized to prosecute, by suit or petition, and to demand and receive from the State of Virginia and the United States, any half-pay or commutation and interest that may be due, particularly under the act of 5th July, 1832, and to substitute and appoint one or more attorneys under him, with a general or special authority to do all he is permitted to do, and revoke the same at pleasure. We hereby ratify and confirm whatever said attorney or his substitute may lawfully do in the premises. As witness our hands and seals, this 25th day of November, 1835.

JOHN TOWNSHEND, [SEAL.]
TOWNSHEND MAINWAVING, [SEAL.]
HESTER LEE MASSIE, [SEAL.]
SIDNEY TOWNSHEND, [SEAL.]
ARABELLA TOWNSHEND, [SEAL.]
HARRIET FRANCES TWEMLON, [SEAL.]

Witness to the signature of John Townshend—
ROB. GEO. MASSIE,
BENNETT V. TOWNSEND.

Witness to the signature of Towhshend Mainwaving—
ROBT. GEO. MASSIE,
THOMAS MOULSDALE.
Witness to the signature of Hester Lee Massie—
G. B. BLOWPOT,
ROBT. GEO. MASSIE.
Witness to the signature of Sidney Townshend—
DAVID WALTERS,
ROBT. GEO. MASSIE.
Witness to the signature of Arabella Townshend—
DAVID WALTERS,
ROBT. GEO. MASSIE.
Witness to the signature of Harriet Frances Twemlon—
ROBT. GEO. MASSIE,
CHARLES CHAMBERS.

GENERAL LAND OFFICE, *December 2d*, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original paper filed in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

JOHN WILSON,
Commissioner of the General Land Office.

Defendant's Exhibit "B," No. 2," referred to in the foregoing answer at page eighteen.

This indenture, made and concluded on the eighteenth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, by and between William S. Scott, of Richmond, Virginia, and Samuel H. Smith, of Washington city, D. C., witnesseth: that the said William S. Scott, for and in consideration of the sum of seven hundred and fifty dollars in hand paid, to their full satisfaction, before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath bargained and sold and doth hereby bargain, sell, assign, transfer, and set over to the said Samuel H. Smith, his heirs and assigns, all his right, title, claim, and interest in and to six certain Virginia military land warrants, numbered 7614, 7615, 7616, 7617, 7618, and 7619, granted for 15,000 acres, and on which there is still due 1500 acres, which said warrant granted to the said of the first part, for the revolutionary services of Gen. Charles Lee, of the Virginia continental line, and now on file in the General Land Office at the city of Washington, awaiting the emanation of land scrip thereupon: to have and to hold, to use, possess, and enjoy the said warrants or the scrip which shall issue thereupon, unto the only proper use and

behoof of him, the said Samuel H. Smith, his heirs and assigns, forever. And the said William S. Scott doth covenant and agree with the said S. H. Smith and his heirs, as follows, to wit: First, that he has title to the said warrants. Secondly, that he will well and truly warrant and defend to him, the said S. H. Smith, and his heirs, a good, lawful, and sufficient title in absolute fee, to the warrants aforesaid, and the scrip which shall issue thereupon, free from the claim, title, or demand of him, and free from the claim, title, or demand of all and every person or persons whomsoever; and thirdly, he doth hereby guaranty to the said Samuel H. Smith the validity of the said warrant and scrip which may or shall issue thereupon, and for the purpose of investing the said S. H. Smith fully with all his rights in and authority over the said warrants and scrip, the said Wm. S. Scott doth hereby make, constitute, and appoint him his true and lawful attorney, with a power of substitution, to ask, demand, and receive from the General Land Office, Washington city, the said land warrants or land scrip, with full power and authority to sell, and assign the same, and to do and perform, or cause to be done, any and every other act or acts necessary for receiving, selling, assigning, or enjoying the said warrants or scrip; hereby ratifying and confirming whatsoever his said attorney may lawfully do or cause to be done in the premises.

WM. S. SCOTT, [SEAL.]

DISTRICT OF COLUMBIA,
Washington County, to wit:

On this 18th day of January, 1858, personally appeared before the subscriber, a justice of the peace in and for the said county, Wm. S. Scott, and acknowledges the foregoing instrument of writing to be his act and deed, according to the purport, true intent, and meaning thereof, and the act of assembly in such case made and provided.

Acknowledged before and certified by

CLEMENT T. COOTE, *J. Peace.*

Wm. S. Scott, the party grantor of the within, has full authority on file to sell the warrant, and appoint a substitute; and in the event of Congress making up the 10 pr. ct., the scrip to be issued will be delivered to Mr. Smith.

F. KELLER.

18th Jan'y, 1838.

Defendant's exhibit, "C," referred to in the foregoing answer, at page nineteen.

WASHINGTON, *Dec'r 21st*, 1852.

DEAR SIR: I would beg leave respectfully to request that, in accordance with the provision of the late act of Congress on the

subject, you will cause to be issued to me, as executor of my father, the late Samuel H. Smith, scrip for the 1-10 deducted from the following warrants, granted on Virginia revolutionary claims owned by my late father, to wit: to Gen'l Charles Lee, Nos. 7614, 7615, '16, '17, '18, and '19, for 15,000 acres; warrant No. 7567; warrants Nos. 205, 206, 207, 208, 209—8136, 8137, 8138. The papers, &c., and bills of sale for the above to my father are on file among the archives of your office, as appears from a statement in my possession, signed by the late Mr. Keller, of the land office. Besides the above warrants, there are others in which I believe my father was interested, and which interest will appear from the papers in your office.

Begging your attention to this matter in due course, I remain, very respectfully, your ob. s't,

J. B. H. SMITH.

To JOHN WILSON, esq'r, *Commissioner.*

GENERAL LAND OFFICE,
December 11th, 1854.

I, John Wilson, Commissioner of the General Land Office, do hereby certify that the annexed is a true and literal exemplification of the original paper filed in this office.

[SEAL.] In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

JOHN WILSON,—
Commissioner of the General Land Office.

Defendant's exhibit, "B," No. 1, referred to in the foregoing answer, at page twenty.

Know all men by these presents, that I do hereby appoint of my true and lawful substituted attorney for me, and in my name, to exercise the same control over the warrants issued to the heirs of

Gen'l Charles Lee, for	15,000	acres.
To heirs of John Reynolds, for	6,000	"
" James Gray, for	4,607⅓	"
" Stephen Turnbull, for	4,000	"
" John Baker, for	1,300	"
	30,907⅓	

In all thirty thousand nine hundred and seven ⅓ acres, as I could do in virtue of powers of attorney now on file in the land office in Washington. Having sold to Jno. M. Walker the aforesaid warrants, and delivered to him the scrip issued in lieu thereof, and there still remaining ten per cent. of said warrants unsatisfied by scrip: Now the object of this power of at'ty is to secure to said Walker the said ten per cent. of warrants unsatisfied or any and

every equivalent that may be at any time given in lieu thereof; and I do hereby invest the said Walker with all and each of the powers over said property as is now proposed by me in virtue of the aforesaid powers of at'ty.

As witness my hand and seal this 30th day of March, 1837.

WM. S. SCOTT, [SEAL.]

COUNTY OF HENRICO, *to wit:*

Personally appeared before me, a justice of the peace for the aforesaid county, Wm. S. Scott, and acknowledged the above power of at'ty to be his free act and deed. As witness my hand and seal this 30th day of March, 1837.

JOHN G. MOSBY, *J. P.*

Having constituted W. S. Scott my substituted at'ty to control several of the warrants recited in the foregoing power of at'ty, and it being doubtful whether said Scott may have the power to create a substitute under him: now I do hereby, with the consent and at the request of said Scott, substitute of my substituted attorney, giving to said substitute the same powers over said warrants as were previously conferred on the said Scott. As witness my hand and seal this 30th day of March, 1837.

JOSEPH SEGUR, [SEAL.]

COUNTY OF HENRICO, *to wit:*

Personally appeared before me a justice of the peace for the aforesaid county Joseph Segur, and acknowledged the above instrument of writing to be his free act and deed. As witness my hand and seal this 30th March, 1837.

JOHN G. MOSBY, *J. P.*

VIRGINIA, *Henrico Co., to wit:*

I, Loften N. Ellet, clerk of the county court for the said county of Henrico, in the State of Virginia, do hereby certify that John G. Mosby, whose name is subscribed to the two foregoing certificates, was, on the day of the date thereof, an acting justice of the peace in and for said county of Henrico, duly commissioned and qualified according to law.

In testimony whereof, I hereto set my name and annex the seal [SEAL.] of the said court this 1st day of April, 1837, in the 61st year of the commonwealth.

LOFTEN N. ELLET, *Ct'k. C.*

Defendants' exhibit, "B," No. 3, referred to in the foregoing answer, at page 21.

DISTRICT OF COLUMBIA,
County of Washington, set:

On this eighteenth day of April, in the year of our Lord one

2072

thousand eight hundred and fifty-four, before the subscriber, a justice of the peace in and for the county of Washington, D. C., personally appeared John F. Webb, a citizen of Washington city, and made oath on the holy evangely of Almighty God that on or about the eighteenth day of January, 1838, he, as the agent in behalf of the late Samuel H. Smith, purchased from one Dr. Wm. S. Scott, of Va., the ten per cent. due on the following military land warrants, issued by the State of Virginia to General Charles Lee, numbered 7618, 7619, 7617, 7615, 7616, 7614, for 15,000 acres of land, for the sum of seven hundred and fifty dollars, (being at the rate of fifty cents per acre,) which sum in cash he the same day paid to the said Wm. S. Scott, and received from said Scott a deed conveying the said lands, to wit, 1,500 acres, to the said Samuel H. Smith and his heirs; that the said deed was immediately filed and recorded in the General Land Office; and said John F. Webb further made oath that on or about the 17th February, 1838, he was shown, at the office of Fowler & Co., in said city of Washington, a certain paper purporting to be an assignment of the same lands by said William S. Scott, to one John M. Walker, which paper was dated the 30th of March, 1837, but that said paper had not then been filed in the General Land Office, had never been seen before that day by him, the said Webb, and was not filed in the General Land Office until some months after the date and filing in said office of the said deed of conveyance from said Scott to said Samuel H. Smith, and further that he never had notice of said pretended assignment to said Walker.

JOHN F WEBB.

Sworn and subscribed before me.

B. K. MORSELL, *J. P.*

Statement.

On the 18th of January, 1838, the late Samuel H. Smith purchased from the owner thereof his right to the ten per cent. due, (the 9-tenths having been paid,) or to become due, on the certain military land warrants hereinbefore mentioned, and received a deed conveying the same to him. This deed was immediately filed in the General Land Office. Before perfecting the purchase, the said Smith made diligent inquiry in the land office to ascertain whether his vendor had then full right to sell the same, and was informed that from all that appeared in the office, he had such right, and that so soon as an appropriation should be made by Congress, the scrip should be issued directly to him, the said Smith, as see endorsement on deed long after the date of the purchase by said Smith; and after the filing the deed to him, a paper dated the 30th March, 1837, purporting or pretending to be an assignment to one John M. Walker of the same rights, and executed by the same

vendor, to wit, one Wm. S. Scott, was placed in the General Land Office. The date of its being left does not appear on the paper, and the said Smith never had any notice of the existence of such paper.

Defendant's exhibit, "B," No. 4, referred to [in] the foregoing answer, at page 22.

STATE OF VIRGINIA,
Corporation of Fredericksburg, to wit:

I, John Conckley, a justice of the peace in and for the State and corporation aforesaid, do hereby certify that Dr. Wm. S. Scott personally appeared before me at the corporation aforesaid, and made oath that the sale made by him in March, 1837, to Mr. John M. Walker, of the 10 per cent. due of Gen'l Lee's warrant was avoided by a total failure of the consideration therefor, and that the power of attorney given him to said Walker to receive said 10 per cent. was intended to be, as he supposed it was, revoked by the subsequent sale and assignment of the same; so far as Gen'l Lee's warrant was concerned. Before making said last-mentioned sale to Mr. Sam'l H. Smith, in which Mr. John F. Webb acted as agent for the purchaser, that he consulted with chancellor John Robinson as to his rights under the circumstances to make a second sale, who advised him that he had a perfect right to do so, and that there was no legal or moral obligation on his part to refrain from making such second sale, the failure of consideration having avoided the prior sale. Under this advice he made the sale, and thereby cancelled the power of attorney to said Walker as to the Gen'l Lee warrant.

W. S. SCOTT.

Subscribed and sworn to before me the day of 28th July, A. D. 1854. JNO. CONKLEY, *J. P.*

GENERAL LAND OFFICE, *December 1st*, 1854.

I, John Wilson, commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications of the originals on file in this office.

In testimony whereof I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written. [SEAL.]

JOHN WILSON,
Commissioner of the General Land Office.

Defendant's Exhibit "E" referred to in the foregoing answer at page 21.

GENERAL LAND OFFICE, *August 3d*, 1854.

SIR: I have carefully considered the conflicting claims of John

M. Walker, esqr., and J. B. H. Smith, to the 10 per c. now due on the revolutionary bounty land warrants, issued by the State of Virg'a for the services of Gen. Charles Lee. Nine-tenths of these warrants were satisfied by the issue of scrip under the act of Mar. 3d, 1835. The claims presented are for the one-tenth remaining unsatisfied.

Mr. Walker's claim is based on an instrument dated 30th March, 1837, signed by Wm. S. Scott, heretofore recognized as the at'ty of the heirs of Gen'l Lee. This instrument purports to substitute, as the at'ty of said Scott, to exercise the same control over the several warrants therein designated as he could in virtue of the powers of at'ty on file in the Gen. Land Office; reciting that he had sold to Walker those warrants, and delivered to him the scrip issued in lieu thereof, and there still remaining 10 per c. of said war'ts unsatisfied by scrip: now the objects of this power of at'ty is to secure the said Walker the said 10 per c. of warrants unsatisfied, or any and every equivalent that may be at any time given in lieu thereof; and further declaring that "I do hereby invest the said Walker with all and each of the powers over said property as is now possessed by me in virtue of the aforesaid powers of at'ty." On the 18th Jan., 1838, Scott sold this ten per c. of the Lee warrants to S. H. Smith, esqr., by regular deed of conveyance, coupled with a full power of attorney, &c. This conveyance has the following endorsement by F. Keller, the cl'k, then in charge of the Va. military division of this office, to wit: "W. S. Scott, the party grantor of the within, has full authority on file to sell the warrant, and appoint a substitute, and the event Congress makes up the 10 per c., the scrip to be issued will be delivered to Mr. Smith. F. Keller, 18th Jan'y, 1838."

From this endorsement the inference is that the instrument under which Walker claims was not then on file in this office. This inference is confirmed by the testimony of Mr. Webb, who negotiated the purchase of said warrants for Mr. Smith, and who deposes that he saw this instrument subsequent to that time in the possession of Mr. Prout, of this city. Scott testifies that the sale made by him of this warrant to Walker in March, 1837, was avoided by a total failure of the consideration therefor, and that the power of attorney given by him to Walker was supposed and intended to be revoked by the subsequent sale and assignment to Smith, &c. The first difficulty I find in this case is in relation to the heirship of Gen'l Lee. He had rendered the service that entitled him to bounty land under the laws of Virg'a, but the claim had not been satisfied, nor had the warrants issued prior to making his will. The question then arises whether the residuary legatee took, under that will, property which Genl. Lee did not have in his possession at the time he made that will. If these warrants did not pass to the residuary legatee, there is no proof of heirship; if they did, the proof, as it now stands, is deficient and unsatisfactory. Part of it

must have been lost, however, from the references made in the papers.

On the supposition that the action of this office heretofore was correct, in recognizing the proof of heirship as satisfactory, and Scott as the att'y of the heirs of Gen'l Lee, I am of opinion that Smith's claim to these warrants is superior to Walker's, because, 1st, the sale to Smith virtually revoked the power to Walker, and was a final disposition of the matter; 2d, if the sale to Walker had been absolute, I should still consider Smith's claim as superior, because the property was left in Scott's possession, and comes fairly within the principles cited by Mr. Smith.

A reasonable time will be given to Mr. Walker to test the question before the courts, before further action will be taken in the matter.

Respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

HAMILTON G. FANT, esq., present.

GENERAL LAND OFFICE,
Dec'r 2d, 1854.

I, John Wilson, Commissioner of the General Office, do hereby certify that the annexed is a true and literal exemplification from the record, page 184, vol. 4 Script Letters, in this office.

In testimony whereof, I have hereunto subscribed my name, and caused the seal of this office to be affixed at the city of Washington, on the day and year above written. [L. S.]

JOHN WILSON,
Commissioner of the General Land Office.

Whereupon the said cause was regularly continued at rules until October term, 1855, when the said complainant, by his solicitor aforesaid, filed in court here the following replication, to wit:

General Repl'n.

The replication of John M. Walker, complainant, to the answer of J. B. H. Smith, defendant.

This complainant, saving and reserving to himself all and all manner of exceptions, &c., for replication to the answer of said defendant, saith he doth and will aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendant, and that the answer is very uncertain, evasive, and insufficient in the law to be replied unto by the repliant without that, &c., &c.

Whereupon the said cause was regularly continued at rules, until September, eighteen hundred and fifty-six, when the said parties, by their solicitors aforesaid, agreed that a commission issue to

Christopher Ingle, esquire, to take testimony, and the said cause was set for hearing by consent.

Com'n to take testim'y.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Christopher Ingle, esquire, greeting:

Know ye, that you are appointed commissioner to examine evidences in a cause depending in the circuit court for the county of Washington, in the District of Columbia, between John M. Walker, complainant, and J. B. H. Smith, defendant.

Therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that, at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you, by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered, on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and that you cause three days' notice to be given to the parties, or their attorneys, of the execution of this commission, before you execute the same; and having reduced the depositions of the witnesses, so taken by you, into writing, you send the same, with this commission, closed under your hand and seal, to the judges of the said circuit court, with all convenient speed.

Witness the honorable James Dunlop, chief judge of the said court, the first day of July, in the year of our Lord one thousand eight hundred and fifty-six.

Issued the thirtieth day of September, 1856.

JNO. A. SMITH, *Clk.*

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties. So help you God.

Sworn to before me, a justice of the peace for the county of Washington, D. C.

LEO. BOWEN, *J. P.*

18th Oct., 1856.

On the back of the foregoing commission, is the following endorsement, to wit:

"The execution of this commission appears by certain schedules thereunto annexed.

"CHRISTOPHER INGLE, [SEAL.]
"*Commissioner.*"

At the execution of the annexed commission issued out of the court of chancery, and to me directed, and empowering me to examine evidences in the cause depending in the said court between John M. Walker, complainant, and J. B. H. Smith, defendant, I, Christopher Ingle, the commissioner therein named, having given three days' previous notice to the respective solicitors of the parties, and taken the oath annexed to the said commission, did proceed, on or about the 18th day of October, 1856, in the presence of Walter D. Davidge, esq., solicitor for the complainant, and of William J. Stone, jr., esq., solicitor for the defendant, to take the following deposition, to wit:

Depo. of Jno. F. Webb.

John F. Webb, a witness produced on the part of the complainant, having been first sworn in due form of law, deposeth and saith:

To the interrogatory No. 1. Do you or not know the parties to this suit, or either of them? If yea, how long have you known them, or either of them?

I know them both, and have known them about twenty years.

No. 2. Do you or not know anything in relation to the alleged purchase by Samuel H. Smith, decased of William S. Scott, on the eighteenth day of January, 1838, of the unsatisfied ten per cent. of military land warrants issued by the State of Virginia, and alleged in the bill, and numbered 7,618, 7,619, 7,617, 7,615, 7,616, 7,614? If you answer yea, state fully and particularly all your knowledge in relation to said purchase.

On or about the eighteenth day of January, 1838, Dr. William S. Scott came to my office, in the city of Washington, and proposed to sell me some of the ten per cents. due on Virginia military land warrants. I answered, that I would purchase. He then proposed to sell me the fifteen hundred acres due on Gen. Charles Lee's warrant, the subject of controversy in this suit, at fifty cents per acre. He said he was going to the Capitol, and would return in the afternoon; and I could pay for them when he returned, and, in the meantime I might examine whether the assignment would be good. I went with Samuel H. Smith, for whom I purchased them, to the General Land Office, and found that, so far as the records of that office showed, there was no prior assignment. In the evening Dr.

Scott called and assigned the warrants to Samuel H. Smith, and I paid him seven hundred and fifty dollars for them.

3. Did you or not know at any time of the assignment by said Scott to John M. Walker, a copy whereof is filed in this cause, and marked J. M. W., Exhibit No. 1, which is now shown you? If you answer yea, state when you first saw it, and when you afterwards saw it.

On or about the seventeenth day of February, 1838, I was at Charles S. Fowler & Co's office in the city of Washington. William Prout, one of the firm, asked me if I would purchase any of the ten per cents. due on the Virginia military land warrants. I answered that I would. He went to his iron chest and took out the paper referred to in the interrogatory, a copy of which is now shown to me. To my surprise, the first name on the list contained in that paper was Gen. Charles Lee's for fifteen thousand acres. I was surprised to find it there, because Dr. William S. Scott had sold it to me on the eighteenth day of January, 1838. Mr. Prout permitted me to take a copy of the deed, with which I went to Richmond, expecting to get from Dr. Scott other warrants in the place of the fifteen hundred acres of Gen. Charles Lee's. On the twenty-first of February, 1838, not being able to find Dr. Scott at Richmond, I called on Thomas Green, who then resided there, and told him that I wanted to see Dr. Scott. He asked me what I wanted to see him about. I told him that he had sold me the fifteen hundred acres due on Gen. Charles Lee's warrants. Mr. Green told me that then Scott had lied to him; that he had stated to him that he had pledged the warrants to Charles J. Nourse, esq., to raise money to pay certain drafts drawn on him, Nourse, by Green. At the time of the assignment to Samuel H. Smith, Scott had told me that the proceeds were to go to Charles J. Nourse, for Green. Immediately after this conversation with Green, he and I went in search of Dr. Scott, but did not find him at home. We went to the Capitol, where we found Dr. Scott. Mr. Green took him aside and entered into conversation with him. What passed between them, I do not know. After they parted, I joined Scott, who told me that if I had not seen Mr. Green, he would have given me other warrants in place of Gen. Charles Lee's warrants purchased by me for Smith. The assignment to Walker, which I saw at the office of C. S. Fowler & Co., I saw some months afterwards at the General Land Office, in the possession of Mr. Keller, the clerk. I think it was in the autumn of 1838. In the fall of that year I had a good deal to do with other warrants, and I think I saw it then. My impression is, that Mr. Prout told me he had filed it before he left the city in June or July, 1838.

(Objected to by def't, as hereinafter noted.)

4. Did you or not ever have an interview with said William S. Scott in relation to his having twice assigned the unsatisfied interest in the same warrants? If you answer yea, state particularly

what occurred at said interview. State also whether said Scott alleged at said interview that the assignment to Walker was revoked by a failure of consideration or otherwise.

I have answered above, as to my interview with Scott at Richmond. The same day, or the day following, I met him in the passage of the Eagle Hotel, at Richmond, and asked him what he was going to do for me. He answered, that he could do nothing. He did not, at either interview, state whether the assignment to Walker was revoked or not.

(Objected to by defendant, as hereinafter noted.)

5. Did or did not Scott at your first interview with him at Richmond treat the assignment to Walker as a valid and subsisting assignment?

He did; and said he would have given me other warrants if I had not seen Mr. Green.

(Objected to by defendant, as hereinafter noted.)

6. Did or did not Mr. Thomas Green ever offer, in behalf of Scott, to give you other warrants in lieu of the ten per cents. you had purchased from Scott for Smith? If so, state when, and in whose presence.

In the fall of 1838, Mr. Thomas Green called at my office, and said that he would give me other warrants in lieu of the ten per cents. I had purchased from Scott. Mr. Thomas Steele, who is now living in the city of Washington, was present. I supposed that Mr. Green had received the money for the ten per cents., and did not wish Smith to suffer by it. My impression was, that Scott and Green were associated together in some manner, in the prosecution of Virginia military land warrants; but in what manner, or on what terms, I do not know.

(Objected to by defendant, as hereinafter noted.)

7. Do you know or not any other matter material to the parties in this cause?

I regret, exceedingly, that I did not mention these things to Mr. Smith in his lifetime. I did not want to give him uneasiness; and, besides, I felt assured, from the offer of Mr. Green, that he would not let Smith lose. I file with the commissioner, as part of my evidence, two papers: the copy of the assignment to Walker, which I obtained at the office of C. S. Fowler & Co., and the statement of Thomas Steele, as to what passed between Mr. Green and myself in the fall of 1838. I know the unsatisfied ten per cent. on the warrants, in the name of the heirs of John Reynolds, (mentioned in the assignment to Walker,) was paid to Walker. I think the payment was made in the summer of 1854 or 1855. I know nothing material to either of the parties, further than I have stated above.

(Objected to by defendant, as hereinafter noted.)

JOHN F. WEBB.

To the cross-interrogatory on behalf of the defendant:

No. 1. Have you had any communication with the complainant in relation to this suit? and if so, what?

I wrote to John M. Walker in the spring (I think) of 1854, to know if he had any interest in the Virginia military land-warrant claims, filed under the act of 1835. He said he had; and mentioned some of the warrants specified in the said assignment to him. I got a second letter from him, in which he asked me to employ a lawyer. I was so situated in reference to Mr. Smith, that I determined to have nothing to do with this case, and handed the letter to Mr. William B. Webb, who employed A. H. Lawrence, esq. I subsequently loaned Walker fifty dollars to pay Mr. Lawrence.

JOHN F. WEBB.

Re-examined.

1. Have you or not expended in behalf of Samuel H. Smith, or his heirs, any money in the matter now in controversy? Have you or not any interest, direct or indirect, in the event of this suit?

I paid my expenses to Richmond, which cost me at least fifty dollars. I also paid for copies of the evidence on which the Executive of Virginia allowed the warrants to be issued in favor of Gen. Charles Lee's heirs. When I made the purchase for Smith, I was to have one-third of the nett profits, after paying the principal and interest; and the lapse of time has nearly if not quite extinguished my interest. I certainly have no other interest in the event of the suit.

JOHN F. WEBB.

So much of the answer to the above interrogatory No. 3 as refers to any interview or conversation with Dr. Scott or Thomas Green, and the declaration of Mr. Prout, as to the time when the assignment was filed, is objected to by the defendant, as irrelevant, and as but hearsay. The interrogatory No. 4 is objected to by the defendant as irrelevant, and because the answer can be but hearsay, and also irrelevant. The answer to the same is objected to for the same reasons, to wit., because irrelevant and hearsay.

The interrogatories No. 5 and No. 6, are objected to by the defendant for the same reasons as applied to interrogatory No. 4. The answers to the same also objected to for the same reasons which apply to the answer to the interrogatory No. 4.

The answer to interrogatory No. 7 is objected to by the defendant as irrelevant and hearsay, except the statement that the deponent did not inform Mr. Smith. The papers filed as part of the same are also objected to as irrelevant and hearsay.

There being no other witnesses to be examined, the commissioner

closed the said commission, and herewith returns the same under his hand and seal, this twenty-ninth day of December, 1856.

CHRISTOPHER INGLE, [SEAL.]

Decree dismissing Bill.

Whereupon the said cause was regularly continued at rules until the fourth Monday of March, eighteen hundred and fifty-seven, when the said cause coming on to be heard on the bill, exhibits, answer, general replication and depositions; and the same being seen and read by the court, and the parties by their solicitors being heard, and the matter being fully understood, it was ordered by the court, on mature deliberation, that the complainant's bill be dismissed with costs; and that the said defendant recover against the said complainant the sum of thirty-one dollars and seventy-eight cents, for his costs and charges by him in this behalf laid out and expended.

Test: JNO. A. SMITH, *Clerk.*

Appeal prayed and granted.

And thereupon, the said complainant, by his solicitor aforesaid, prayed an appeal from the judgment and decree aforesaid, made by the court in the premises, to the Supreme Court of the United States, and to him it is granted; whereupon he filed in court here the following appeal bond, to wit:

Appeal Bond.

Know all men by these presents, that we, John M. Walker, Hamilton G. Fant, and Christopher Ingle, are held and firmly bound unto Jonathan B. H. Smith, in the full and just sum of four hundred dollars lawful money, to which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth day of April, eighteen hundred and fifty-seven.

Whereas, lately, at a circuit court of the District of Columbia, sitting as a court of equity for Washington county, in a cause wherein the said John M. Walker, was complainant, and the said Jonathan B. H. Smith, was defendant, a decree was rendered against the said complainant, and he having entered an appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such, that if the said John M. Walker shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then

the above obligation to be null and void, otherwise to be and remain in full force and virtue.

HAMILTON G. FANT, [SEAL.]
JOHN M. WALKER, [SEAL.]
By W. D. DAVIDGE, *his att'y.*
C. INGLE, [SEAL.]

Signed, sealed, and delivered in the presence of—
W. D. DAVIDGE.

Clerk's certf'te and seal.

And the same being approved of, it is ordered that a record of the proceedings aforesaid, with all things thereunto relating, be transmitted to the said Supreme Court of the United States, which is done accordingly.

In testimony whereof, I have hereunto subscribed by name, and [SEAL.] affixed the seal of said court, this first day of December, A. D. 1857.

JNO. A. SMITH, *Clerk.*